

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JUAN BOSCO ALVAREZ,
Petitioner,
v.
BRENDA M. CASH, Warden,
Respondent. }
} NO. CV 12-7494-RGK-MRW
} MODIFIED PROTECTIVE ORDER

IT IS HEREBY ORDERED that the Motion for Protective Order is
GRANTED.

The Court hereby enters the following Protective Order, which regards:

(1) documents and materials from trial and appellate counsel's files that Petitioner discloses during this habeas action which are protected by the attorney-client privilege and/or work product doctrine, including declarations of prior counsel¹; (2) confidential documents and materials relating to Petitioner's health and mental health that Petitioner discloses during this habeas action; and (3) any reference to such documents in the parties' pleadings submitted to the Court. This Protective Order pertains to litigation preceding any evidentiary hearing this Court may hold in this case and does not address

¹ See *Bittaker v. Woodford*, 331 F.3d 715 (9th Cir. 2003).

1 the testimony provided at any evidentiary hearing in this matter.

2 1. On June 27, 2013, Petitioner filed his Timeliness Brief. Petitioner also filed
 3 a First Amended Petition (“FAP”). In pleading his claims and addressing the issue of
 4 timeliness, Petitioner included, 1) facts and statements from his prior counsel
 5 related to Petitioner’s representation at trial that are protected by the attorney client
 6 privilege and work product doctrine², and 2) confidential medical and mental health
 7 records.³ This privileged and confidential information is referenced throughout the
 8 Timeliness Brief and the FAP. In addition to these already-filed privileged or
 9 confidential documents, this litigation may require additional production of documents
 10 and testimony that Petitioner contends are subject to claims of privilege and/or are
 11 protected from disclosure by the attorney work product doctrine, or are confidential
 12 records relating to Petitioner’s mental health. *See John B. v. Superior Court*, 38 Cal. 4th
 13 1177, 1198, 137 P. 3d 153, 45 Cal. Rptr. 3d 316 (2006) (holding that the California
 14 Constitution’s recognition of the inalienable right to privacy extends to medical records,
 15 subject to certain limitations). Any such documents shall be subject to this Protective
 16 Order.

17 2. All privileged and/or confidential documents as described in Paragraph 1
 18 above which are disclosed in this action may be used only for purposes of litigating this
 19 habeas corpus proceeding by: a) Petitioner and the members of his legal team, i.e.,
 20 lawyers, paralegals, investigators, and support staff, assigned to this action by the Office
 21 of the Federal Public Defender, and persons retained by Petitioner’s counsel to litigate
 22 this matter, including, but not limited to, outside investigators, consultants, and expert
 23 witnesses; and (b) Respondent and the members of the legal team, i.e., lawyers,
 24 paralegals, investigators, and support staff, assigned to this action by the California

26 ² Materials and testimony subject to a privilege or the attorney work product
 27 doctrine will be referred to collectively hereinafter as “privileged” materials.

28 ³ Personal medical and mental health records which are confidential will be
 referred to collectively hereinafter as “confidential” materials.

1 Department of Justice, Attorney General's Office, and persons retained by Respondent's
2 counsel to litigate this matter, including, but not limited to, outside investigators,
3 consultants, and expert witnesses. This Protective Order extends to members of the legal
4 teams and all persons retained by the parties to litigate this matter. All such individuals
5 shall be provided with a copy of this Protective Order. Nothing in this Protective Order
6 shall preclude any person or agency from using any information contained in materials
7 designated as privileged or confidential material in this habeas corpus action if the
8 information was lawfully obtained independently of this habeas corpus action.

9 3. Except for disclosure to the persons and agencies described in Paragraph 2,
10 or unless otherwise ordered by a court, disclosure of the contents of the documents and
11 the documents themselves shall not be made to any other persons or agencies, including,
12 but not limited to, prosecutorial agencies and law enforcement personnel, without the
13 Court's order. Disclosure of the documents or their contents to the District Attorney for
14 the limited purpose of litigating a petition for writ of habeas corpus to exhaust state
15 remedies in state court shall not constitute a violation of this Order, nor shall such
16 disclosure constitute a waiver of any of the protections herein.

17 4. Documents that Petitioner contends are privileged or confidential shall be
18 clearly designated as such by labeling the documents in a manner that does not prevent
19 reading the text of the document. If the parties disagree about the designation of material
20 as privileged or confidential pursuant to this Protective Order and are unable to resolve
21 the dispute informally, the parties shall follow the procedure for resolving discovery
22 disputes prescribed by Fed. R. Civ. Proc. 37 and Local Rules 37-1 through 37-4.

23 5. All documents designated as privileged or confidential that are submitted
24 to this Court shall be submitted under seal in a manner reflecting their confidential nature
25 and designed to ensure that the privileged or confidential material will not become part
26 of the public record, in accordance with Local Rule 79-5. Any pleading or other papers
27 served on opposing counsel or filed or lodged with the Court that contain or reveal the
28 substantive content of the privileged or confidential matter shall be filed under seal, and

1 shall include a separate caption page that includes the following confidentiality notice or
2 its equivalent:

3 **TO BE FILED UNDER SEAL**

4 THIS PLEADING OR DOCUMENT CONTAINS CONFIDENTIAL
5 INFORMATION SUBJECT TO A PROTECTIVE ORDER AND IS NOT
6 TO BE OPENED NOR ITS CONTENTS DISPLAYED OR DISCLOSED

7 6. If privileged or confidential documents or documents containing
8 privileged or confidential information are filed with this Court, they shall be filed with
9 the Clerk of this Court in sealed envelopes prominently marked with the caption of the
10 case and the foregoing Confidentiality Notice. The Clerk of the Court is directed to
11 maintain the confidentiality of any documents filed in accordance with the above.
12 Insofar as reasonably feasible, only confidential portions of the filings shall be under
13 seal; and the parties shall tailor their documents to limit, as much as is practicable, the
14 quantity of material that is to be filed under seal. When a pleading or document
15 contains only a limited amount of privileged or confidential content, a party may file a
16 complete copy under seal and at the same time file on the public record an additional,
17 redacted version of the document, blocking out the limited matter comprising the
confidential portions.

18 7. No later than 30 days after this Protective Order is granted, Petitioner
19 shall identify any previously filed or lodged documents that are privileged or
20 confidential. For each such item, Petitioner shall file a redacted version of the item, if
21 feasible, blocking out the privileged or confidential matter; and for each such
22 originally filed item, Petitioner shall supply the clerk with a "To Be Filed Under Seal"
23 caption page and envelope that conform to the privileged caption, and the clerk shall
24 insert the filed or lodged item in the envelope, seal the item, and re-file it.

25 8. Petitioner's disclosure of documents from trial or appellate counsel's file in
26 this action, and any related testimony by Petitioner or members of Petitioner's defense
27 team at any evidentiary hearing in this case, does not constitute a waiver of Petitioner's
28 rights under the Fifth and Sixth Amendments to the United States Constitution in the

1 event of any retrial.

2 9. This order shall continue in effect after the conclusion of the habeas corpus
3 proceedings and specifically shall apply (1) in the event of a retrial of all or any portion
4 of Petitioner's criminal case, and (2) in the event of any competency proceedings beyond
5 the instant action. Any modification or vacation of this order shall only be made upon
6 notice to and an opportunity to be heard from both parties.

7 IT IS SO ORDERED.

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10 Dated: September 13, 2013



MICHAEL R. WILNER
United States Magistrate Judge

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13 Presented by:

14 /S/ Lauren Collins
15 LAUREN COLLINS
16 Deputy Federal Public Defender
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